

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

Crl.MC.No. 4354 of 2015

**SC 628/2007 of II ADDITIONAL SESSIONS COURT, PALAKKAD DATED 12-04-2012
CP 51/2007 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, PATTAMBI
CRIME NO. 70/2005 OF CHALISSERY POLICE STATION, PALAKKAD**

PETITIONER(S)/ACCUSED NO.3:

**M.K.NOUFAL, AGED 34 YEARS,
S/O.KUNJU MUHAMMED, MADATHIRUTHIGHALIL HOUSE,
MANNARA PARAMBU, KAPPUR P.O., PALAKKAD DISTRICT.**

**BY ADVS.SRI.B.RAMAN PILLAI (SR.)
SRI.R.ANIL
SRI.M.SUNILKUMAR
SRI.SUJESH MENON V.B.
SRI.T.ANIL KUMAR
SRI.MANU TOM
SRI.THOMAS ABRAHAM (NILACKAPPILLIL)
SRI.M.VIVEK
SRIA.RAJESH**

RESPONDENT(S)/COMPLAINANT:

**STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM-682031.**

BY SRI.T.ASAF ALI, DGP

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 03-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

PJ

Crl.MC.No. 4354 of 2015

APPENDIX

PETITIONER(S)' ANNEXURES

**ANNEXURE-A: THE TRUE COPY OF THE JUDGEMENT OF THE COURT OF SESSIONS
PALAKKAD DIVISION, DATED 12.4.2012**

**ANNEXURE-B: THE TRUE COPY OF THE JUDGEMENT DATED 9.7.2013 OF THIS
HON'BLE COURT IN CRL.A. NO.800/2012**

**ANNEXURE-C: THE CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO.70 OF
2005 OF CHALISSERY POLICE STATION.**

RESPONDENT(S)' ANNEXURES

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

B. KEMAL PASHA, J.

Crl. M.C. No. 4354 of 2015

Dated this the 03rd day of September, 2015

ORDER

Petitioner is the 3rd accused in Crime No. 70 of 2005 of the Chaliserry Police Station which was later charge sheeted and taken on file by the Judicial First Class Magistrate Court, Pattambi as C.P. No. 47 of 2006.

2. According to the petitioner, during the course of investigation, he became gainfully employed in Mumbai and therefore, he could not participate in the committal proceedings. The case against A1 and A2 was committed to the Court of Session, Palakkad, after splitting up the case against the petitioner as C.P.No. 51 of 2007. The case against A1 and A2 was taken on file by the Sessions Court as S.C. No. 628 of 2007. The said case was made over to the IInd Additional Sessions Court, Palakkad for trial.

3. After trial, the learned IInd Additional Sessions Judge vide judgment dated 12.04.2012 acquitted the 2nd accused under Section 235(1) Cr.P.C, and convicted the 1st accused for the offences punishable under Sections 302 and 341 of IPC. He was sentenced. The 1st accused challenged his conviction and sentence, before this Court through Crl. Appeal No. 800/2012. This Court has allowed the appeal through judgment dated 09.07.2013, and acquitted him also.

4. According to the petitioner, no fruitful purpose will be served on the continued trial of the case as against the petitioner and therefore, he has sought for getting the proceedings against him, quashed.

5. Heard the learned senior counsel Sri. B.Raman Pillai for the petitioner and the learned Director General of Prosecution Sri. T. Asaf Ali.

6. The learned senior counsel for the petitioner has

pointed out that the Division Bench of this Court has disbelieved PW16, whereby the case against the 1st accused has also ended in acquittal. Further, it has been pointed out that the learned Sessions Judge has also chosen to acquit the 2nd accused by disbelieving the evidence adduced by the prosecution as against the 2nd accused. In such case, according to the learned senior counsel, no fruitful purpose will be served in the continued trial.

7. *Per Contra*, the learned Director General of Prosecution has argued that the court below is expected to have an independent appreciation of the evidence that would be tendered in the trial against the petitioner for considering the legality or otherwise of the evidence of the prosecution as against the petitioner and therefore, this Court will not be justified in invoking the power under Section 482 to quash the proceedings against the petitioner.

8. On considering the rival submissions, this Court is

satisfied that it is not just and proper on the part of this Court to invoke the power under Section 482 Cr.P.C. to quash the proceedings against the petitioner, especially when the petitioner is allegedly involved in a grave crime. The petitioner is also charge sheeted for the offences punishable under Sections 302 and 341 IPC r/w Section 34 IPC. In a case involving grave offences like this, this Court will not be justified in quashing the proceedings against the petitioner. Matters being so, the present Crl.M.C. is devoid of merits and is only to be dismissed.

In the result, this Crl.M.C. stands dismissed. At the same time, on the surrender of the petitioner before the court below seeking bail, the court below shall dispose of the application on the same day itself in accordance with law, provided, advance notice is served on the learned Assistant Public Prosecutor in charge of the case. Further, on committal, the petitioner can raise all the grounds raised

here before the learned Sessions Judge while dealing with the matter under Section 227 Cr.P.C.

Sd/-
B. KEMAL PASHA,
JUDGE

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